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Admissibility of Evidence of Attempted Suicide of Accused

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the several states, and a ranking of the various states in this respect. California ranked thirty-fourth. North Carolina and Texas tied for thirty-ninth place. California, by the recent rules referred to above, will step up among the first nine states.

The same report also ranks the different callings, admission to which is regulated by law. It finds that, in North Carolina where only two years of law study is required for admission to the Bar, the various professions, with respect to the period of time required to be spent in general education and professional training, take rank in the following order: medicine, engineering, dentistry, public accountancy, osteopathy, chiropractic, trained nurses, optometry, chiropody, pharmacy, elementary school teaching, and the legal profession.

NOTES

Admissibility of Evidence of Attempted Suicide of Accused

In the case of *State v. Lawrence*[1] the defendant on trial for murder, while confined during the course of the trial, attempted suicide. He had written this note: "To all my friends: since they have started lying so much, it is impossible for me to stand it any longer. So please pardon me for this act I am about to commit. You all know I am not guilty, and I am being lied on by some, and the worst ones for that are yet to come, so this is the shortest way out. Good-bye to you all." The Supreme Court held that evidence of the attempted suicide was properly admitted upon behalf of the state on the analogy to flight as tending to show consciousness of guilt. Justice Brogden dissented.

In the course of the opinion reference was made to the four reported cases in which the question has arisen to date. In New Mexico,[2] Illinois,[3] and New Jersey,[4] evidence of an attempt by the accused to destroy himself has been held to be admissible. Defendant laid stress upon the fourth case, a North Dakota decision.[5] There the state relied upon the evidence of two confessed accomplices. By statute such evidence would not support a conviction without corroborating evidence tending to connect defendant with the commission of the offense. The court held that evidence of the attempted suicide did not raise a presumption of guilt or constitute sufficient

[1] 196 N. C. 562, 146 S. E. 395 (1929).
[2] State v. Blancett, 24 N. M. 433, 174 Pac. 207 (1918).
[3] People v. Duncan, 261 Ill. 339, 103 N. E. 1043 (1914).
[4] State v. Jaggers, 71 N. J. L. 281, 58 Atl. 1014, 108 Am. St. Rep. 746 (1904).
[5] State v. Coudotte, 7 N. D. 109, 72 N. W. 913 (1897).

corroborating evidence to sustain a conviction. But the court did not hold that evidence of the attempted suicide was inadmissible.[6] Thus the Coudotte case does not decide the question of admissibility and all existing authority upon that question is affirmative.

The question here is purely one of relevancy. No exclusionary rule of evidence is involved. What conduct of an accused after the commission of a crime is to be deemed relevant against him? Under the decisions common types of such conduct are flight,[7] resisting arrest,[8] attempting to bribe the officer making the arrest,[9] concealing one's identity,[10] subornation of witnesses[11] or bribing jurors,[12] suppressing evidence[13] or intimidating witnesses,[14] and escape or attempt to escape after arrest.[15] There is some indication that persons apprehending conviction have a distinctly higher suicide rate than the normal population.[16] But that does not *per se* give the evidence probative value on the fact of guilt because an innocent man is likely to apprehend conviction.

Four views of the question of admissibility may be suggested: 1—That the evidence should be admitted generally.[17] The defendant would be entitled to introduce evidence in explanation of his conduct. The fact of the attempt would not raise a presumption of guilt[18] but would be an item of circumstantial evidence tending to increase the probability of guilt. The weight of the evidence, under the usual practice, would be for the jury. 2—That the evidence should be admitted unless it appear that the accused is mentally disordered. In this latter contingency it would be for the court to decide whether

[6] In the Coudotte case there was the added circumstance that the accused was a Sioux Indian and there was uncontroverted evidence that the Sioux could not endure confinement.

[7] State v. Mull, 196 N. C. 351, 145 S. E. 677 (1928). But the accused is entitled to explain his conduct and the exclusion of his evidence that he fled because the brothers of the murdered man had threatened his life was erroneous. *Ibid.* See also State v. Hairston, 182 N. C. 851, 109 S. E. 45 (1921).

[8] McKevitt v. People, 208 Ill. 460, 70 N. E. 693 (1904).

[9] Taylor v. State, 110 Ga. 150, 35 S. E. 161, 164 (1900).

[10] Almerigi v. State, 18 Okla. Cr. App. 458, 188 Pac. 1094 (1920); State v. Whitson, 111 N. C. 695, 16 S. E. 332 (1892).

[11] State v. Weissengoff, 89 W. Va. 279, 109 S. E. 707 (1921).

[12] State v. Case, 93 N. C. 545, 53 Am. Rep. 471 (1885).

[13] State v. Constantine, 48 Wash. 218, 93 Pac. 317 (1908).

[14] State v. Little, 174 N. C. 793, 94 S. E. 97 (1917).

[15] Flannigan v. State, 136 Ga. 132, 70 S. E. 1107 (1911).

[16] See HOFFMAN, SUICIDE PROBLEMS (1927), 215. The author makes an indefinite reference to an investigation tending to sustain the proposition stated.

[17] This is the view followed in the Lawrence case.

[18] The Coudotte case sufficiently indicates that evidence of an attempted suicide by the accused should not be deemed to raise a presumption of guilt.

the abnormality of the accused was the real explanation of his conduct and thus made evidence thereof unreliable. 3—That the evidence should generally be excluded as irrelevant. 4—That, conceding the bare relevancy of the evidence, it should be excluded because not sufficiently material to counterbalance the consideration that a jury is not qualified to estimate its value and would be inclined to accord it undue weight because of its dramatic character.

Literature in the English language upon the sociological and psychological aspects of the suicide problem is scant.[19] It does appear, however, that social and psychological factors are so important in the explanation of a given suicide and are so variable that it would be dangerous to adopt a broadside rule admitting the evidence. Suicide may be described as an abnormal solution to a problem of an individual personality, which that individual has been unable to solve by normal adjustments. The difficulty of piercing the veil of motives and introspection leading up to the act makes a suicide the more difficult (especially for a *behaviorist*) to explain.

The fourth view may be rejected at once because, though expert evidence is expensive, the important interests at stake would justify resort to expert testimony as an aid to the jury in assessing the value of the evidence.

The second view is preferable to the first. It would tend to keep the attempt from the jury if the explanation of the conduct of the accused lay in his abnormality. But the rule of exclusion is probably the fairest of all. Admissibility here depends upon the likelihood that an accused person who attempts suicide is guilty. Does a showing of such conduct increase the probability of guilt? Ordinary human experience as to such situations is too limited to teach us much. There is not, and hardly could be, statistical data to show that a larger ratio of accused persons who attempt suicide are guilty than of those who do not attempt it.[20] Motivation is important here but is difficult to arrive at because the accused might have responded to any one of several motives only one of which, con-

[19] For a recent statistical treatment of the subject see A. D. FRENAY, THE SUICIDE PROBLEM IN THE UNITED STATES (1927). A more analytical study is that of RUTH SHONLE CAVAN, SUICIDE (1927). For periodical and current literature on the general subject see the *Psychological Index*.

[20] In all of the four cases in which the question has arisen the accused was convicted and in each case the evidence of the attempt was doubtless relied upon by the jury in reaching its verdict. Since the state seldom may, and does, appeal the reports do not contain cases in which attempted suicide by the accused was in evidence and a verdict of acquittal was rendered.

sciousness of guilt, bears upon the question of guilt. Moreover, motivation may be unconscious.[21] It may fairly be concluded, therefore, that the evidence is too unreliable to be brought into the case. Of course, the state might in an exceptional case negative other motives than consciousness of guilt and thereby qualify the evidence.

Assuming that the attempted suicide might be shown in evidence it would seem fair at first blush to admit the explanatory note. Let us examine the problem. In the Lawrence case the note was read in evidence by a witness for the state. Where its content is favorable to the accused as in that case he would hardly object to its introduction by the state. If the note were unfavorable to the accused the state could bring it into the case as an admission or a confession, since it would necessarily be one or the other.

If the note were not placed in evidence by the state in showing the attempt could the accused introduce it? This is doubtful. His best recourse would be to offer it as a declaration concerning present state of mind in order to show a state of mind other than consciousness of guilt at the time of the attempt. The objections open to such an offer would be the availability of the accused as a witness, the fact that the attempt was so recent that the present recollection of the accused of his state of mind at the time of the attempt is substantially as accurate as the note, and the fact of the probable deliberate character of the note.[22] If the trial judge was satisfied that the test of spontaneity were satisfied he might, under the authorities, admit the note even though the declarant was available.[23] The accused would clearly be entitled to explain the attempt and evidence to show a state of mind other than consciousness of guilt at the time of the attempt would be explanatory. Since the *onus* is upon the state all that the accused need do to win is to neutralize the effect of the evidence for the state and to that end he might offer the note simply to show the fact of his state of mind alone without reference to positively showing that he was not guilty. We have the dictum of the Hillmon case that, to show state of mind, declarations as to presently existing state of mind may be admitted even though the

[21] Hutchins and Slesinger, *Some Observations on the Law of Evidence—State of Mind to Prove an Act* (1929), 38 YALE L. J. 283, 295.

[22] The declaration, to be competent, must have been made naturally and without circumstances of suspicion. E. M. Morgan, *A Suggested Classification of Utterances Admissible as Res Gestae* (1922), 31 YALE L. J. 229.

[23] Mutual Life Ins. Co. v. Hillmon, 145 U. S. 285, 295, 12 Sup. Ct. 909 (1892). The declarant was not available in this case.

declarant is available as a witness.[24] The suggestion that that dictum went so far as to lay it down that the declaration as to state of mind would be admissible to show a future act though the declarant is available is subject to question.[25] It is quite likely that Mr. Justice Gray in writing the opinion in that case did not observe the distinction but the words of the dictum may fairly be taken to have reference to admitting declarations to show state of mind just for the purpose of showing state of mind.[26]

If accused offers the note to show his innocence it should be excluded. Though the contrary view has support,[27] it is believed that the dictum of the Hillmon case does not logically require the admission of declarations as to presently existing state of mind to show past conduct.[28] Furthermore, as recently suggested in an acute article in the *Yale Law Journal*,[29] where the accused is available to testify directly concerning the fact of guilt, it is undesirable and unnecessary to tread the tortuous maze of the hearsay exception in question. The recollection of the accused as to the fact of his guilt or innocence would hardly have dimmed since the note was written. Finally, it would give the accused an unwarranted advantage to allow him to introduce the note as positive evidence on the question of guilt because he could still exercise his privilege against self-crimination and thereby escape cross examination by the state.

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JURISDICTION OF PERSON AND PROPERTY FOR PURPOSE OF ATTACHMENT

The extraordinary remedy of foreign attachment is governed by local statutes in the several states.[1] These statutes are based on the fact of the debtor's non-residence and the presence of his property within the state. Consequently it becomes important for courts to

[24] *Ibid.*
[25] Art. cit. *supra* note 21, 285.
[26] *Supra* note 23. The dictum is premised with this sentence: "The existence of a particular intention in a certain person at a certain time *being a material fact to be proved*, evidence that he expressed that intention at that time is as direct evidence of the fact, as his own testimony that he then had that intention would be."
[27] Eustace Seligman, *An Exception to the Hearsay Rule* (1912), 26 HARV. L. REV. 146.
[28] John MacArthur Maguire, *The Hillmon Case—Thirty-three Years After* (1925), 38 HARV. L. REV. 709.
[29] Art. cit. *supra* note 21, 287.
[1] The N. C. Statute, C. S. §§798, 799.